

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Regulated Industries Committee

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BILL: SB 1172

INTRODUCER: Senator Bennett

SUBJECT: Elevator Safety

DATE: March 3, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			CA	
3.			MS	
4.			WPSC	
5.				
6.				

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**I. Summary:**

The bill revises the provisions of ch. 399, F.S., relating to the regulation of elevators.

The bill creates a 5-year exemption for updates to the safety code for existing elevators in condominiums that relate to Phase II Firefighters' Service, which is a building code and elevator safety code requirement that permits firefighters to operate and control an elevator for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment. The exemption is limited to buildings issued a certificate of occupancy as of July 1, 2008. The exemption does not apply if the elevator is replaced or requires major modification before the end of the 5-year exemption.

The bill also:

- Corrects citations to the most current edition of the elevator installation and maintenance standards;
- Grants the Division of Hotels and Restaurants, Bureau of Elevator Safety, within the Department of Business and Professional Regulation, additional rulemaking authority and the right of access to regulated equipment;
- Provides standards for the approval of requests for variances from the rules of the division;
- Provides additional violations that may result in the suspension or revocation of an elevator inspector certification;

- Requires that certified elevator inspectors and certified elevator companies respond to written requests by the division for an explanation of their inspection procedures and applications;
- Increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the division; and
- Authorizes the division to issue citations for unlicensed activity, and gives the division the authority to enforce the citation as a stop work order.

The bill repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height.

The bill provides an effective date of July 1, 2010.

This bill substantially amends the following sections of the Florida Statutes: 399.01, 399.02, 399.035, 399.049, 399.061, and 399.105.

The bill creates section 399.16, Florida Statutes.

The bill repeals section 553.509(2), Florida Statutes.

## **II. Present Situation:**

### **Elevator Regulation**

Chapter 399, F.S., which may be cited as the “Elevator Safety Act,”<sup>1</sup> establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of ch. 399, F.S. The department has rulemaking authority to enforce the provisions of ch. 399, F.S.<sup>2</sup> The Elevator Safety and Technical Advisory Council (advisory council) within the department provides technical assistance to the division.<sup>3</sup> It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.<sup>4</sup> According to the division, there were approximately 73,280 elevators in Florida as of August

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<sup>11</sup> See s. 399.001, F.S.

<sup>2</sup> See s. 399.10, F.S.

<sup>3</sup> See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

<sup>4</sup> Section 399.01(6), F.S.

2008 for which it has inspection responsibilities. This number includes approximately 25,000 elevators in the five contracted jurisdictions for which it has secondary oversight responsibility.<sup>5</sup>

Section 399.125, F.S., requires certificate of operation holders to report any accident occurring in or upon any elevator within 5 days. It provides an administrative fine not to exceed \$1,000 for failing to timely report the accident.

### **Elevator Inspections**

The owner of the elevator is responsible for the safe operation, proper maintenance, inspection, and correction of code deficiencies of the elevator.<sup>6</sup> Elevators must have a certificate of operation before they can be operated. Certificates of operation are valid for two years and expire at the end of the period unless revoked. The certificates can only be renewed for vertical conveyances that have had a current satisfactory inspection.<sup>7</sup>

Section 399.061, F.S., requires the annual inspection of elevators by a certified elevator inspector.<sup>8</sup> The certified elevator inspector may be a private elevator inspector, a state-employed elevator inspector, or an inspector for a municipality or county under contract with the department.<sup>9</sup> The privatization of elevator inspections has helped to increase the number of licensed inspectors and has helped the bureau increase the number of inspections conducted each year, as mandated by the annual inspection requirement.<sup>10</sup>

An elevator inspection is not required if the elevator is not an escalator or a dumbwaiter, serves only two adjacent floors, and is covered by a service maintenance contract that remains in effect.<sup>11</sup> A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division, and, if the service maintenance contract is cancelled, the cancellation must be reported to the division.

Municipalities and counties under contract with the department may choose to require that the inspections be performed by their own inspectors or by private certified elevator inspectors. The department may inspect elevators in the municipality and county to determine whether the provisions of ch. 399, F.S., are being met. The department may cancel its contract with any municipality or county that it finds has failed to comply with the contract or ch. 399, F.S.<sup>12</sup> Counties and municipalities may not issue or take disciplinary action against an elevator inspector's certification, but the department may initiate disciplinary action against a private inspector's certification at the request of a county or municipality.

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<sup>5</sup> The following five local governments are under contract with the department to provide elevator inspection services: the cities of Miami and Miami Beach, Broward and Miami-Dade counties, and Reedy Creek Improvement District.

<sup>6</sup> Section 399.02(5)(b), F.S.

<sup>7</sup> Section 399.07(1), F.S.

<sup>8</sup> In 2001, the Legislature amended s. 399.061, F.S., to increase the frequency of elevator inspections from once every two years to annual inspections. *See* s. 10, ch. 2001-186, L.O.F.

<sup>9</sup> *See* s. 399.061, F.S. In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors.

<sup>10</sup> *Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, Report No. 08-18, Office of Program Policy Analysis & Governmental Accountability, Florida Legislature, April 2008.

<sup>11</sup> Section 399.061(1), F.S.

<sup>12</sup> Section 399.13, F.S.

To be a certified elevator inspector, a person must acquire the qualified elevator inspector credential prescribed by the American Society of Mechanical Engineers (ASME). A certified elevator inspector must annually register with the division and provide proof that he or she:

- Has completed eight hours of continuing education;
- Remains in good standing with the ASME qualified elevator inspector credential, and
- Has general liability insurance coverage in the minimum amounts set by the division.<sup>13</sup>

A fee is not required to be paid for registration with the division as a certified elevator inspector. According to the department, there are 12 inspectors employed by the division, and 272 registered private inspectors.

Chapter 399, F.S., does not provide an explicit right-of-entry for the bureau's inspectors to perform their inspection duties. According to the department, its employees have occasionally been refused entry to perform their duties.

### **Disciplinary Action, Administrative Fines, and Penalties**

Section 399.07(6), F.S., authorizes the bureau to suspend a certificate of operation if it finds that the elevator is not in compliance with ch. 399, F.S., or the rules adopted pursuant to its authority. Section 399.049, F.S., provides the following limited grounds for suspending, revoking, or imposing a monetary penalty on an elevator inspector or a certificateholder:

- (1) The department may suspend or revoke an elevator inspector's certification, an elevator company's registration, an elevator certificate of competency, or an elevator certificate of operation issued under this chapter or impose an administrative penalty of up to \$1,000 per violation upon any registered elevator company or certificateholder who commits any one or more of the following violations:
  - (a) Any false statement as to a material matter in an application for registration, certification, or any permit or certificate issued under this chapter.
  - (b) Fraud, misrepresentation, or bribery in the practice of the profession.
  - (c) Failure by a certified elevator inspector to provide the department and the certificate of operation holder with a copy of the inspection report within 5 days after the date of any inspection performed after the initial certificate of operation is issued.
  - (d) Violation of any provision of [ch. 399, F.S.]
- (2) Any disciplinary action taken under this chapter must comply with chapter 120 and any rules adopted thereunder.

Section 399.105(1), F.S., authorizes an administrative fine of not more than \$1,000 against any person who fails to respond to reasonable requests by the department to determine whether the provisions of a service maintenance contract and its implementation to ensure safe elevator operation.

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<sup>13</sup> Section 399.01(14), F.S.

Section 339.105(4), F.S., requires that elevator owners must correct violations within 30 days of issuance of an order to correct. According to the department, 30 days is often not enough time to correct violations and to obtain a follow-up inspection.

Section 399.11, F.S., provides second degree misdemeanors for violations of ch. 399, F.S., and rules adopted under this chapter. It provides a first degree misdemeanor for falsely representing oneself as credentialed under ch. 399, F.S.

### **OPPAGA Report-Elevator Regulation**

A recent report by the Office of Program Policy Analysis & Government Accountability (OPPAGA) studied the implementation of elevator safety provisions by the Bureau of Elevator Safety (bureau) within the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. The report included a study of the implementation of s. 399.061, F.S., which permits elevator owners to hire private elevator inspectors.<sup>14</sup>

The OPPAGA report found that some private elevator inspectors are not responding to written requests from the bureau for clarification of their inspection methods. The purpose of these requests is to reconcile the results of the private inspections that did not find elevator safety violations with the re-inspections by the bureau that did find safety violations. The OPPAGA report recommended that private inspectors and elevator companies should be required by law to respond to the bureau's requests for clarification.

The OPPAGA report studied other practices of the bureau and made recommendations to improve those practices, including the bureau's analysis and reporting of elevator accidents, and its public posting of information regarding the safety of elevators.

### **Senate Interim Report - Review of Elevator Safety and Regulation**

The professional staff of the Senate Regulated Industries Committee conducted an interim study of the extent to which the bureau has adopted the OPPAGA recommendations and analyzed the need for legislative action to implement the OPPAGA recommendations.<sup>15</sup> The interim report concluded that s. 399.049, F.S., should be amended to provide that an elevator inspector's certification or an elevator company's registration may be suspended, revoked or fined for failing to respond to a written request from the bureau for information relating to the results of elevator inspections. Senate Professional Staff concluded that the information provided by the private inspectors and elevator companies could assist the bureau to improve the reliability of elevator inspections.

Professional staff also recommended that the bureau should be required to annually analyze elevator incident data, report its findings to the Legislature, and make its report available on the Internet in its entirety. The report concluded that the information could help the Legislature and the public to assess the effectiveness of current elevator safety regulation.

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<sup>14</sup> *Supra* at n. 10.

<sup>15</sup> See *Review of Elevator Safety and Regulation*, Interim Report 2009-125, Florida Senate Committee on Regulated Industries, September 2008.

### ***Retrofitting Elevators to Meet Current Code Requirements***

Section 399.02(1), F.S., requires the Elevator Safety Code to be the same as or similar to the American Society of Mechanical Engineers (ASME),<sup>16</sup> which provides minimum model standards for the installation, operation, and maintenance of elevators. The ASME codes are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code.

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2004), provides a guide for the inspection of elevators, escalators, and moving walks.<sup>17</sup>
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.

The elevator safety code requires that any alteration, relocation or reclassification of an existing elevator, also be in compliance with the edition of the Florida Building Code that is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.<sup>18</sup> Specifically ASME A17.3, requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.

The bureau's rules indirectly adopt the ASME standards for the maintenance and installation of elevators. Instead of specifically referencing the ASME standards, the bureau adopted ch. 30 of the 2004 Florida Building Code, including the 2006 supplements, which relates to elevators.<sup>19</sup> The Florida Building Code adopts the ASME standards, including part 8 of ASME A17.1, and ASME A17.3. It also delegates the regulation and enforcement of the ASME elevator codes to the bureau.<sup>20</sup>

On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators.<sup>21</sup> On April 2, 2008, the bureau adopted the ASME elevator standards that were incorporated in the Florida Building Code.<sup>22</sup>

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<sup>16</sup> The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

<sup>17</sup> ASME A17.2 (2004). The bureau has adopted and incorporated by reference in rule 61C-5.001(1)(b), F.A.C.

<sup>18</sup> Rule 9B-3.047, F.A.C., which incorporates the Florida Building Code, including ASME A17.1 and A17.3,<sup>18</sup> into the Elevator Safety Code, and requires that existing elevators be maintained according to the current safety standards in the Florida Building Code and the Florida Elevator Safety Code.

<sup>19</sup> Rule 61C-5.001, F.A.C.

<sup>20</sup> Chapter 30, ss. 3001.1 and 3001.2, Florida Building Code.

<sup>21</sup> Chapter 30, Florida Building Code.

<sup>22</sup> Rule 61C-5.001, F.A.C.

According to state and local elevator inspection officials, the safety standards in ASME A17.3 (1996) that were adopted in the Florida Building Code and the elevator safety code in 2002 and 2005, respectively, were not new and were already in the ASME A17.1, part 8, before the adoption of those building codes.<sup>23</sup>

The professional staff of the Senate Regulated Industries Committee conducted an interim study of the enforcement of elevator safety code standards that require elevator owners to modify or retrofit elevators in order to comply with revisions or updates to those standards.<sup>24</sup> The interim study noted the increase in the number of elevators failing inspections and the number of requests filed by elevator owners for a variance or waiver from elevator safety code requirements as a result of failed inspections.

The interim report found that it was not clear from a review of the variance requests and accompanying inspection reports whether any of the code violations related to the retroactive application of code standards. The report found, based on representation by the bureau and code enforcement officials in Miami-Dade County, that the increase in the number of elevator violations may be attributable to other factors, including an increase in the number of state inspectors, and the statutory authorization<sup>25</sup> for the use of private inspectors which has permitted the bureau to meet its workload demands.

The interim report found that the division regularly receives requests for variances or waivers related to the firefighters' service requirement.

The ASME firefighters' service provisions were developed by the elevator industry in 1973.<sup>26</sup> The ASME firefighters' service requirement has two primary components:

- Phase I emergency recall operation; and
- Phase II emergency in-car operation.<sup>27</sup>

When smoke or heat is detected, the Phase I emergency recall operation requirement automatically or manually recalls an elevator to a specific landing and removes the elevator from normal service. This prevents riders from using the elevator and becoming trapped.

The Phase II emergency in-car operation requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment.

The interim report noted that there have been no reported instances of injury or death in Florida related to the failure or absence of these elevator components.

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<sup>23</sup> See *Review of Elevator Safety and Regulation*, Interim Report 2010-128, Florida Senate Committee on Regulated Industries, October 2010.

<sup>24</sup> *Id.*

<sup>25</sup> Section 399.061, F.S. In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors.

<sup>26</sup> Bukowski, Richard, et al., *Elevator Controls*, National Fire Protection Association Journal, March/April 2006.

<sup>27</sup> Rule 3.11.3, A.S.M.E. A17.3 (1996 edition).

The interim report recommended that ch. 399 F.S., be amended to provide the bureau with guidelines for the issuance of variances and waivers related to the application of elevator standards. It also recommended that:

- The bureau should be required to determine whether any updates or modifications of the Elevator Safety Code require immediate application to existing elevators which would require elevator owners to retrofit elevators to bring them into compliance.
- The bureau should be authorized to delay the application of revisions of the elevator safety code for a period of up to three years in order to give elevator owners additional time to anticipate the costs of compliance.

The report also sets forth recommended guidelines for the bureau to consider for the issuance of variances and waivers and when determining whether revisions to the elevator safety code should be applied immediately.

Regarding the retrofitting of existing elevators emergency regional access requirement in s. 399.15, F.S., local fire marshals may allow substitute emergency measures that will provide reasonable emergency elevator access if it is technically, financially, or physically impossible to bring a building into compliance with this access requirement.<sup>28</sup> The State Fire Marshal has adopted a rule that establishes a lock box that can accept the regional key as the acceptable alternative.<sup>29</sup>

### ***Emergency Alternate Power Generators for Elevators***

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,<sup>30</sup> was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.<sup>31</sup> Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.<sup>32</sup>

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of

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<sup>28</sup> Section 399.15, F.S.

<sup>29</sup> See rule 69A-47.019, L.O.F.

<sup>30</sup> Section 12, ch. 2006-71, L.O.F.

<sup>31</sup> Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."

<sup>32</sup> Section 553.509(2)(c), F.S.



powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

An October 2008 interim report prepared by the professional staff of the Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems that citizens and governmental agencies have had in implementing these requirements.<sup>33</sup> Senate professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;<sup>34</sup>
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may out-weigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;
- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

### **Variances and Waivers**

State agencies may grant exemptions or modifications to their rules in cases that may lead to unreasonable, unfair, or unintended results. The Florida Administrative Procedures Act provides a process by which affected persons may petition state agencies for a variance or waiver from a rule.<sup>35</sup> Variances or waivers relate to state agency rules. Agencies may not grant a variance or waiver for any federal statutory or rule requirements.<sup>36</sup>

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<sup>33</sup> See *Review of Elevator Safety and Regulation*, Interim Report 2009-125, Florida Senate Committee on Regulated Industries, September 2008.

<sup>34</sup> *Id.* As noted in the interim report, this finding was based on information provided by the state emergency management officials.

<sup>35</sup> Section 120.542, F.S.

<sup>36</sup> Section 120.542(1), F.S.

A variance is an agency decision to grant a modification to all or part of the literal requirements of an agency rule to an affected person.<sup>37</sup> A waiver is an agency decision *not to apply* all or part of the literal requirements of an agency rule to an affected person.<sup>38</sup>

Section 120.542(2), F.S., provides the conditions for the granting of a variance or waiver. To qualify for a variance or a waiver, a person must demonstrate that:

1. The purpose of the underlying statute will be or has been achieved by other means by the person; and
2. Application of a rule would create a substantial hardship or would violate principles of fairness.

The term “substantial hardship” means a “demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.”<sup>39</sup> The term “principles of fairness” means that the “literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.”<sup>40</sup>

### III. Effect of Proposed Changes:

#### Elevator Regulation

**Section 1** repeals subsection (11) s. 399.01, F.S., to repeal the definition for the term “temporarily dormant conveyance”, which is a term that is not used in ch. 399, F.S.

The bill also amends the definition of the term “certified elevator inspector” in s. 399.01(13), F.S., to delete the provision which sets forth the registration requirements for a certified elevator inspector. The registration requirements that are deleted from the definition are provided by the bill in a new s. 399.17, F.S.

**Section 2** amends s. 399.02(3)(t), F.S., to revise a cross-reference to the Elevator Safety Code by replacing the reference to s. 1.2 of the Elevator Safety Code with s. 1.1.2 of the code.

The bill does not specify the relevant ASME standard for s. 1.1.2. The reference to the Elevator Safety Code may be too general. The reference to s. 1.1.2 appears to relate to s. 1.1.2 of ASME A17.1, which provides standards for the installation, alteration, maintenance, repair, inspection, and testing to ensure the minimum safety requirements for new and existing elevators, and lists the equipment that is exempted from the safety standard.<sup>41</sup>

<sup>37</sup> Section 120.52(21), F.S.

<sup>38</sup> Section 120.52(22), F.S.

<sup>39</sup> Section 120.542(2), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> There is also s. 1.1.2 in ASME A17.2 and ASME A17.3, but s. 1.1.2 in part 1 of ASME A17.2, relates to the periodic testing of the door opening device. Section 1.1.2 of ASME A17.3 relates to equipment that is not covered by ch. 399, F.S., or the Elevator Safety Code, but that section of the safety standard is limited to existing elevators.

The bill creates paragraph (a) of s. 399.02(6), F.S., to authorize the division to adopt rules relating to the administration of ch. 399, F.S. This provision may be duplicative of current law, which in s. 399.10, F.S., grants the department the authority to adopt rules to administer ch. 399, F.S.

The bill creates paragraph (b) of s. 399.02(6), F.S., to provide that the division may enter and have reasonable access to all buildings and rooms or spaces in which an existing or newly installed conveyance and equipment are located.

The bill creates subsection (8) of s. 399.02, F.S., to authorize the division to grant variances for undue hardship under s. 120.542, F.S.,<sup>42</sup> and the rules adopted under that section. The division may not grant a variance that adversely affects public safety. The rules adopted under s. 120.542, F.S., must include a process for requests for variances.

The bill creates subsection (9) of s. 399.02, F.S., to provide a 5-year exemption for elevators in condominium buildings from compliance with the Phase II Firefighters' Service as amended into ASME A17.1 and A17.3. The exemption is limited to buildings issued a certificate of occupancy as of July 1, 2008. The exemption does not apply if the elevator is replaced or requires major modification before the end of the 5-year exemption. The bill does not define the term "major modification".

The bill provides that it does not restrict an elevator owner's ability to apply for a variance from the Phase II Firefighters' Service or the division's ability to issue variances. This section requires the division to adopt rules to administer the exemption.

This provision would prevent the application of any future updates to the elevator safety code that relate to the Phase II firefighters' service to any elevator in a condominium issued a certificate of operation after July 1, 2008, unless the elevator is replaced or requires major modifications. The Phase II firefighters' service requirements in the elevator safety code or the Florida Building Code that are in effect at the time this provision becomes law, regardless of when the codes were updated to include or revise the provision, would remain applicable to all existing elevators.

**Section 3** amends s. 399.035(1)(c), F.S., to correct a cross-reference. The bill replaces the reference to s. 211 of the American National Standards Institute standard ANSI A17.1, which relates to accessibility for the physically handicapped during an emergency evacuation, with the current version of the standard in s. 2.27.3 of the Society of Mechanical Engineers Standard ASME A17.1.

**Section 4** amends s. 399.049(1), F.S., to provide the following additional violations that may result in the suspension or revocation of an elevator inspector certification:

- Failure to maintain his or her qualified elevator inspector credential in good standing;
- Having a license to install, inspect, maintain, or repair any vertical conveyance revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or county; and
- Engaging in fraud or deceit, negligence, incompetency, or misconduct in the practice of the profession.

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<sup>42</sup> Section 120.542(1), F.S., authorizes agencies to adopt rules for granting variances and waivers to the requirements of their rules. The agency rules must be consistent with s. 120.542, F.S.

**Section 5** creates subsection (5) in s. 399.061, F.S., to require certified elevator inspectors and certified elevator companies to respond to written requests by the division for an explanation of the inspection procedures and applications that were used for preparing an inspection report in which the department found errors and omissions of code violations and tests.

**Section 6** amends s. 399.105(4), F.S., to increase from 30 days to 90 days the period of time that elevator owners must correct violations after the issuance of an order to correct by the division.

**Section 7** creates s. 399.16, F.S., to provide a process for the issuance of citations for unlicensed activity. The bill authorizes the division to issue a citation for unlicensed activity upon a finding of probable cause that activity requiring a permit, certificate, or license is being performed without a valid permit, certificate, or license. The division may enforce the citation as a stop work order.

The bill requires that the form of the citation must be prescribed by rule, and that the division may adopt rules to administer this section. The rules must include a schedule of penalties.

The citation for unlicensed activity must be issued to:

- The owner of an unlicensed elevator,
- Unlicensed elevator personnel, or
- The owner of the unregistered elevator company.

The bill provides that the unlicensed activity must cease when the citation is issued. The person receiving the citation must respond by paying the civil penalty, which may not exceed \$1,000 per violation, or by requesting an administrative hearing pursuant to ch. 120, F.S.

Each day that a violation continues constitutes a separate violation.

The bill provides that the remedies in s. 399.16, F.S., are not exclusive and may be imposed in addition to other remedies in ch. 399, F.S.

**Section 8** creates s. 399.17, F.S., to provide the registration requirements for certified elevator inspectors. The registration requirements are the same as in the definition for the term “certified elevator inspector” in the current s. 399.01(14), F.S.

### **Alternate Power Generators for Elevators**

**Section 9** amends s. 553.509, F.S., to delete the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height.

### **Effective Date**

The bill provides an effective date of July 1, 2010.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill increases from 30 days to 90 days the period of time that elevator owners have to correct violations after the issuance of an order to correct by the division. The additional time to correct violations may provide elevator owners, particularly in condominium buildings, additional time to collect the money required for needed elevator repairs.

The bill repeals the alternate emergency generated power requirement for elevators in high-rise residential dwellings in s. 553.509, F.S. The repeal of this provision may save the owners of such building the costs of compliance with the requirement. It is estimated by industry representatives that the cost to engineer and install the appropriate generator wiring, coupling, and transfer switch is approximately \$4,000 to \$6,000 per location. Options to power an elevator by portable generator include purchase and guaranteed services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost \$300 to \$500 per kilo-watt. Thus, a 20 KW standby generator would cost between \$6,000 and \$10,000. A 100 KW generator would cost between \$30,000 and \$50,000. The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

**C. Government Sector Impact:**

The department anticipates that the increased enforcement authority for elevator violations, including citations for unlicensed activities, would increase revenue and

require two additional FTEs to process the increase in administrative compliance cases and unlicensed activity citations.

The department estimates additional revenue for administrative fines in the amount of \$313,750. The department estimates that the additional revenue from administrative fines would exceed the cost of the two positions needed to manage the increased workload created by this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.